Milwaukee Children's Hospital Association and United Professionals for Quality Health Care, Petitioner. Case 30-RC-3700

April 16, 1981

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Rocky L. Coe of the National Labor Relations Board on February 7, 8, 15, 21, 22, and 29, 1980. Following the close of the hearing, the Regional Director for Region 30 transferred this case to the Board for decision. Briefs were thereafter filed by both the Employer and the Petitioner.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. Upon the entire record in this proceeding, the Board finds:

- 1. The parties stipulated that the Employer is a nonprofit Wisconsin corporation operating a private pediatric health care facility located in Milwaukee, Wisconsin. During the calendar year 1979, a representative year, the Employer received gross revenues in excess of \$500,000 and received goods valued in excess of \$50,000 directly from points located outside the State of Wisconsin. We find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.
- 2. The parties have stipulated, and we find, that United Professionals for Quality Health Care, the Petitioner herein, is a labor organization within the meaning of the Act.
- 3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 4. The Petitioner seeks to represent a unit of all full-time and regular part-time registered nurses employed by the Employer, excluding guards, supervisors as defined by the Act, casual employees, and all other employees. The Petitioner contends that registered nurses in the positions of permanent charge nurse and assistant head nurse should be included in the unit, but it requests the Board to determine whether registered nurses employed as

staff development instructors, clinical specialists, and the employee health nurse are supervisors, managerial employees, or confidential employees who should be excluded from the unit. Finally, the Petitioner has raised a question whether certain part-time employees who work less than 20 regularly scheduled hours a week should be included in the unit.

The Employer contests the appropriateness of the petitioned-for unit. It contends that the only appropriate unit must include not only registered nurses but also all other professional employees at the hospital. The Employer further contends that permanent charge nurses and assistant head nurses are supervisors who must be excluded from the unit, but that staff development instructors, clinical specialists, and the employee health nurse are rank-and-file unit professionals.

The Employer provides regional pediatric care services from a multi-building hospital complex located on a unified site in downtown Milwaukee. Patient care services at the hospital include approximately 162 beds and full diagnostic, therapeutic, and surgical facilities for inpatients, as well as an emergency room and numerous clinical programs for outpatients. The hospital also serves as a teaching facility for the Medical College of Wisconsin.

The hospital is organized into six major departments: Pediatrics, affiliated with the Medical College of Wisconsin; Nursing; Clinical Services; Employee Relations; Finance; and Development. Overall hospital administrative authority is vested in the Employer's president and executive vice president. Six vice presidents have overall daily supervisory and managerial authority within their respective hospital departments.

The Employer employs approximately 185 registered nurses, excluding admitted supervisors.² It also employes the following admitted professional employees: 40 medical technologists; 15 research technologists; 12 social workers; 3 pharmacists; 3 speech pathologists; 3 therapeutic dieticians; 2 psychologists; 2 child behavior specialists; 2 caseworkers; 2 physical therapists; 1 genetics associate; 1 occupational therapist; and 1 cardiovascular research associate.

Almost four-fifths of the Employer's registered nurses work in the Nursing Department. No other professional employees are assigned to this department, which has Nursing Practice and Nursing Service subdivisions. In the smaller Nursing Practice division, there are six registered nurse staff de-

¹ Subsequent to the transfer of this case to the Board, the Petitioner filed a motion to vacate the order transferring case and to remand it to the Regional Director and another motion to conduct the election and impound ballots. The Employer filed a brief in opposition to both motions. The motions are hereby denied as lacking in merit.

The Employer has filed a request for oral argument before the Board. The request is hereby denied, since the record and briefs adequately present all issues and contentions of the parties.

Numerical approximations herein are based on the uncontradicted figures contained in exhibits introduced by the Employer at the hearing.

velopment instructors responsible for inservice instruction and quality assurance nursing programs throughout the hospital.³ In the Nursing Service division, approximately 139 regularly scheduled registered nurses and a nonprofessional support staff provide continuous patient care services in the hospital's surgery area and in its seven inpatient floor units. The manifold duties of these registered nurses include administering medications, performing treatment routines, comprehensively charting symptoms and health status information, providing comfort measures, communicating with physicians, and executing physicians' orders. All of these tasks necessitate constant proximity to or direct contact with the patients under a registered nurse's care.

Another 36 registered nurses work in various subdivisions of the Clinical Services Department. Most of these nurses are assigned to organizational units apart from other professional employees. For instance, no other professionals are formally assigned to the emergency room and poison control center, where 12 nurses work, or to the child and adolescent center, where 5 nurses work. A lone professional caseworker shares formal assignment with 17 registered nurses in the department's division for 47 outpatient clinical programs. Wherever assigned in the Clinical Services Department, registered nurses perform many of the same tasks and use the same basic nursing skills as Nursing Department nurses while caring for outpatients, emergency patients, and ambulatory inpatients. Individual nurse-patient contacts are, however, less sustained in the Clinical Services Department.

Only three registered nurses work outside the Nursing and Clinical Services Departments. One nurse is in the employee health services office of the Employee Relations Department. Another nurse works in the medical education division of the Department of Pediatrics. The third registered nurse works in the cancer center in the Department of Pediatrics. Only this last nurse shares departmental assignment with another professional (a social worker).

Supervision of registered nurses is overwhelmingly intraprofessional. Within the Nursing Department, only registered nurses rank in the supervisory hierarchy which ascends to the overall administrative position of department vice president. Outside the Nursing Department, only registered nurses or physicians immediately supervise any rank-and-file nurse, with the exception of the employee health nurse supervised by the vice president of Employee Relations. The vice president of

the Clinical Services Department, whose specific professional background is not apparent from the record, has nominal ultimate responsibility for both the 36 registered nurses and the 70 other professional employees in his department. All but possibly four nurses not in the Nursing Department, however, are subject to common overall evaluation and direction by a registered nurse who holds the position of assistant director of ambulatory services in the Clinical Services Department. This individual has no supervisory authority over other professional employees. In fact, the caseworker in the outpatient clinics appears to be the only nonnurse professional supervised by a registered nurse.

The other hospital professionals commonly, but not invariably, receive first-line supervision from members of their profession. Intraprofessional supervision is far less likely at the intermediate and advanced administrative levels. For instance, the director of physiological services in the Clinical Services Department is a pharmacist with supervisory authority over staff pharmacists, physical and occupational therapists, a research technologist, and a cardiovascular research associate.

All of the Employer's registered nurses share common educational backgrounds and licensing requirements. They all participate through representatives in various exclusive registered nurse committees. Among these committees, the policy and procedure committee and nursing advisory committee hold important roles in the development, revision, and implementation of a three volume Nursing Policy and Procedure manual. This manual is a massive compendium of uniform rules and guidelines which all registered nurses and nonprofessional nursing staff must follow.

Registered nurses staff the inpatient units and the emergency room on a rotating 3-shift, 24-hours-aday, 7-days-a-week basis. Among other hospital professionals, only medical technologists and pharmacists have a round-the-clock, three-shift schedule, but employees in these classifications do not rotate shift assignments. All other registered nurses and professionals regularly work day-shift hours.

The Employer and the Petitioner have stipulated that there has been no permanent job interchange between registered nurse and other professional employee classifications. On the other hand, the parties introduced a considerable body of evidence concerning functional interchange and contacts between the several hospital professions. As detailed below, the frequency and substantiality of this interaction vary considerably depending both upon the particular assignment of a registered nurse and on the other professional classification in question.

³ At the time of the hearing in this case, the Employer also had a staff development instructor in the surgical unit of the Nursing Service division. In addition, there were two vacant positions in Nursing Practice for nurses classified as clinical specialists.

Registered nurses, wherever located, have virtually no association with research technologists, the cardiovascular research associate, or the genetics associate. At the other end of the spectrum, employees in each of the remaining professional classifications participate and coordinate patient care activities on a regular basis with a registered nurse in at least 1 of the Employer's 47 multidisciplinary outpatient clinics or in the child and adolescent center. The outpatient clinics, for which scheduled hours vary from daily to biweekly, include, inter alia: the diabetes clinic, with nurses and dieticians; the cerebral palsy clinic, with nurses, physical therapist, and a social worker; the child development clinic (for learning disabilities), with nurses, a social worker, psychologists, and child behavior specialists; the juvenile amputee clinic, with nurses, physical and occupational therapists, and social workers; and the oncology clinic, with nurses, a pharmacist, and a social worker.

The registered nurses who work in inpatient and surgical care units deliver their previously described patient care services as part of a coordinated effort by a group usually consisting of the nurses, physicians, licensed practical nurses, nurses aides, and clerical support personnel. According to a patient's individual needs, other specialized care professionals become involved, but the record indicates that these professionals perform most of their patient care duties independent of registered nurses' work.4 Pharmacists, social workers, and dieticians make regular daily rounds to the inpatient floors. The registered nurses share medical inventory duties with the pharmacists and discuss patient care planning and patient progress with the social workers and dieticians. The nurses also have daily contact with medical technologists, but this contact most often involves the telephonic or mailed transmission of laboratory test results. Medical technologists may occasionally visit inpatients' rooms to draw samples for laboratory examination. Nursing Services registered nurses also frequently encounter physical and occupational therapists, either when the therapists visit patients' rooms or when nurses take patients to the hospital therapy rooms.

All hospital professionals earn between \$6.23 and \$10.68 per hour. Registered nurses earn between \$7.02 and \$9.94. There are four or five pay grades on the Employer's pay scale, but the figure for each grade varies by profession. Fringe benefit programs are hospitalwide. The Employer's personnel policies, including grievance procedures, are likewise hospitalwide and administered by the Employee Relations Department. Hiring authority for

all employees is vested in this department, which employs an individual to recruit and interview applicants for all registered nurse and other professional jobs. Any disciplinary action involving lost time against an employee must receive clearance from the Employee Relations Department.

As set forth in the beginning of this Decision, the Petitioner seeks to represent a separate bargaining unit for the Employer's registered nurses. It contends that the evidence summarized above establishes the appropriateness of such a unit. The Employer argues that the record refutes the Petitioner's contention and establishes a close community of interests among all of its professional employees.⁵

The Board has recently reaffirmed its position that, "giving full and due regard" to the legislative admonition against proliferation of health care industry bargaining units, registered nurses "can possess such a community of interests as makes their separate representation appropriate." The determination whether a petitioned-for registered nurse unit will be found appropriate depends upon a case-by-case analysis of the evidence presented. For reasons set forth below, we find that a separate bargaining unit of the Employer's registered nurses is appropriate.

The separate and distinct interests of the Employer's registered nurses are manifest in the operations of the Nursing Department. Overseen by a hospital vice president who is a registered nurse, this department constitutes a unique aggregation of approximately four-fifths of all registered nurses in the hospital. No other professional group in the hospital functions within a single homogeneous administrative structure equivalent in size or scope to the Nursing Department. No other professional group can trace an exclusively intraprofessional line of authority from first-line supervisor to hospital vice president. Finally, no other professional group, nor even the sum of all other professionals at the hospital, closely approximates the numerical size of the large registered nurse complement in the Nursing Department.

⁴ Obviously, registered nurses working evening or night shifts have little or no contact with professionals working only during the day shift.

⁵ We note preliminarily that neither party has maintained that Board law requires finding a separate registered nurse unit appropriate per se. In any event, the Board unequivocally repudiated the notion of a per se unit finding in Newton-Wellesley Hospital, 250 NLRB 409 (1980).

We further note that the record evidence of area collective-bargaining history is not a significant factor in this case. Among private hospitals within the Board's apparent jurisdiction in the Wisconsin area, there are just three separate nurse units and no overall professional units.

⁶ Newton-Wellesley Hospital, supra.

⁷ Compare Newton-Wellesley Hospital, supra, wherein the Board found a requested nurse unit appropriate, with Mount Airy Foundation d/b/a Mount Airy Psychiatric Center, 253 NLRB 1003 (1981), wherein the Board found a separate nurse unit inappropriate and held that only an overall professional employee unit would be appropriate.

Registered nurses in the Nursing Department also share unique functional responsibilities. These nurses play the linchpin role in the delivery of comprehensive inpatient care. Their duties in that role require close and continuous proximity to patients and the use of a diverse number of patient care skills. This continuity of nurse-patient contacts and diversity of skills contrasts sharply with the patient care duties of all other hospital professionals. Although a few other professionals—most notably the social workers, therapists, and dieticians—must regularly visit inpatient units, they are not continually present in any single inpatient unit, their work involves far less frequent contacts with any individual patient, and they perform a much narrower range of specialized health care tasks.

Even those registered nurses not formally assigned to the Nursing Department operate within its penumbra. That department has hospitalwide responsibility through its Nursing Practice section for all registered nurses' inservice instruction and work quality assurance. In addition, the Nursing Policy and Procedure manual promulgated under Nursing Department auspices is an exhaustively comprehensive set of uniform guidelines governing the activities of registered nurses and nursing support personnel throughout the hospital.

The organization and supervision of registered nurses outside the Nursing Department reflect the same distinct professional exclusivity evident within that department. Once again, no other professional classification demonstrates comparable exclusivity. With rare exception, registered nurses outside the Nursing Department are assigned to formally separate departments, where one or no other professional employee works, and they are subject to the unique separate overall authority of the registered nurse who is assistant director of ambulatory services. With even rarer exceptions, only registered nurses or physicians immediately supervise any staff nurse, and nurses do not supervise other professionals.

As indicated above, registered nurses share common separate organization and supervision, common education and licensing requirements, and a uniquely broad range of generalized patient care skills. Consequently, they have a high degree of job interchangeability and daily functional interaction. The Employer contends, however, that there is a high degree of functional interaction among all of its professional employees which outweighs the significance of the above indicia of a separate community of interests among registered nurses. We disagree.

There have been no permanent transfers between registered nurse positions and other professional jobs in recent years. The most extensive functional interchange of any kind involves only the small number of registered nurses and other professionals who work together in various outpatient programs. Nearly as many professionals—i.e., research technologists, the genetics associate, and the cardiovascular research associate—have little or no contact with registered nurses. Furthermore, we find that the daily communications between registered nurses and medical technologists, by far the largest nonnurse professional group, are usually perfunctory exchanges of information between independent nursing and laboratory operations. There are much more substantial contacts between registered nurses and certain other specialized professionals who visit inpatient units, but none of these periodic contacts evinces either significant functional interdependence or a close and continuous interprofessional relationship.

Based on the foregoing, we find that the petitioned-for separate unit of registered nurses is appropriate. We now turn to the resolution of questions concerning whether certain registered nurse job classifications should be included or excluded from the unit.

Assistant head nurses and permanent charge nurses: The Employer contends, in opposition to the Petitioner, that registered nurses in the positions of assistant head nurse and permanent charge nurse are supervisors within the meaning of Section 2(11) of the Act who should be excluded from the unit found appropriate. There are eight assistant head nurses, each of whom works in a different Nursing Department inpatient unit during the day shift. Four permanent charge nurses have evening or night shift assignments in three inpatient units. Another registered nurse spends approximately 30 to 50 percent of her time functioning as a night-shift charge nurse on her unit.

The roles and responsibilities of day-shift assistant head nurses are quite similar to those of evening and night-shift charge nurses. The former are immediately supervised by their respective unit head nurses and they substitute for head nurses during their days off or time away from the patient floors. The latter are immediately supervised by "house" supervisors, the lowest ranking stipulated supervisors present in the hospital after the day shift ends. None of the assistant head nurses or charge nurses has the authority to discipline, promote, transfer, lay off, recall, or reward employees, or to adjust the grievances of employees. There is record testimony that assistant head nurses may occasionally substitute for head nurses in interviewing applicants for employment, but they clearly do not possess independent hiring authority. There is also testimony that assistant head nurses and charge nurses have some input into employee evaluations, but the record fails to disclose any significant independent effect of such input. Neither assistant head nurses nor charge nurses regularly attend supervisory meetings, although assistant head nurses may do so in place of an absent head nurse.

Assistant head nurses and permanent charge nurses spend much of their time engaged in the same type of patient care functions performed by staff registered nurses. The primary additional duty of these alleged supervisors involves the assignment of work to nursing personnel based on an assessment of patient needs, existing workloads, and employee preferences and skills. Contrary to the Employer, we do not regard this work direction function as proof of supervisory authority within the meaning of the Act. It is well-established Board law that persons in health care jobs who give direction to other employees and perform tasks in the exercise of their professional judgment incidental to the treatment of patients are not statutory supervisors.8 Moreover, the record in this case indicates that the directions and assignments given are not significantly distinguishable from those given by undisputed unit registered nurses who serve as nursing team leaders or as occasional charge nurses on a rotating basis.

We find that the Employer's assistant head nurses and charge nurses are not supervisors within the meaning of the Act and should be included in the registered nurse bargaining unit.

Staff development instructors: The Petitioner requests the Board to determine whether the seven registered nurse staff development instructors in the Nursing Department are supervisors or managerial employees who must be excluded from the unit. The Employer contends that these individuals are unit employees.⁹

The principal occupation of staff development instructors is inservice orientation and education. Although they may direct other registered nurses while teaching them various nursing procedures, the record is devoid of any evidence that the instructors exercise any supervisory authority within the meaning of the Act. They cannot hire, transfer, discipline, assign work, or extend the probationary period of any staff nurse. They are not part of the formal employee evaluation process, although a head nurse may request some information from them. Finally, any direction of other registered nurses' work by staff development instructors is

clearly a function of their profession rather than an exercise of true supervisory authority in the Employer's interest.

Apart from the actual preparation and delivery of instruction programs, staff development instructors spend an estimated 5 to 10 percent of their working time providing practical ideas and information for the development of new curricular policies and procedures within the Nursing Department. Subject to approval by the appropriate committee, these policies and procedures may be put into effect. The policy and procedure role of staff development instructors necessarily entails the consistent exercise of discretion and judgment characteristic of professionalism within the meaning of the Act. The mere exercise of professional discretion and judgment does not, however, establish a professional employee's managerial status. 10 We find no evidence in the record that staff development instructors exercise the type of independent job discretion reflective of managerial status or that they actually formulate and effectuate management policies by expressing and making operative the decisions of the Employer. 11

In light of the above, we find that the registered nurse staff development instructors are neither supervisors nor managerial employees and we shall include them in the unit.

Employee health nurse: The Petitioner requests the Board to determine whether a registered nurse employed as the employee health nurse in the Employee Relations Department is a managerial or confidential employee who should be excluded from the unit. The Employer contends that this individual is a unit employee.

The employee health nurse spends an estimated 80 percent of her working time in the employee health service office and the other 20 percent of her time in the outpatient clinics. Her duties in the employee health office include: (1) conducting most parts of preemployment physical examinations; (2) maintaining confidential employee health records; (3) reviewing and communicating workmen's compensation claims to the Employer's insurance carrier; (4) preparing accident reports; and (5) participating in the health examination of workers returning to work after an injury. While working in the outpatient clinics, the employee health nurse performs the same tasks as any other registered nurse there.

⁸ E.g., The Trustees of Noble Hospital, 218 NLRB 1441, 1443-44 (1975).

⁹ The parties take the same positions with respect to two positions for registered nurse clinical specialists. Because these positions were vacant at the time of the representation hearing, we find it unnecessary to determine the unit eligibility of any nurse hired to fill them.

¹⁰ See, e.g., General Dynamics Corporation, Convair Aerospace Division, San Diego Operations, 213 NLRB 851 (1974).

See N.L.R.B. v. Bell Aerospace Company. Division of Textron. Inc.,
416 U.S. 267 (1974); Eastern Camera and Photo Corp., 140 NLRB 569 (1963); Palace Laundry Cleaning Corporation, 75 NLRB 320 (1947).

The employee health nurse reports to and is directly supervised by the vice president of Employee Relations. The nurse has an active role in the discussion of possible revisions of employee health service guidelines. A physician designated to serve as employee health physician has final responsibility for all employee health matters. The vice president of Employee Relations has final responsibility for the implementation of all employee health service policies.

We find that the employee health nurse is not a managerial employee. She does not formulate and effectuate management policy or exercise discretion independent of the Employer's established policies. We further find that this nurse's mere access to confidential medical records is insufficient to establish that she assists and acts in the kind of confidential capacity to the vice president of Employee Relations which would require her exclusion from the unit as a "confidential employee," pursuant to the Board's definition of that term. 12 Accordingly, we shall include the employee health nurse in the unit.

Part-time registered nurses: The Petitioner and the Employer agree that "regular part-time employees" who work at least 20 but less than 40 regularly scheduled hours a week should be included in the unit and that "casual employees" who are not regularly scheduled to work should be excluded. The Petitioner, however, requested the Board to decide

the unit eligibility of "part-time employees" who work less than 20 regularly scheduled hours a week.

Each of the Employer's approximately 13 "part-time" registered nurses works at least one regularly scheduled 8-hour shift biweekly. These nurses are eligible for pension benefits only if they work 1,000 hours a year. They are otherwise ineligible for any employee fringe benefits. In all other aspects of employment, these part-time registered nurses perform the same duties and have the same substantial community of interests with full-time registered nurses as those part-time registered nurses working 20 hours or more a week. Accordingly, we shall include the disputed part-time nurses in the unit.

Upon the entire record in this proceeding, we find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses, including charge nurses, assistant head nurses, staff development instructors, and employee health nurses, employed by the Employer at its pediatric health care facility in Milwaukee, Wisconsin; excluding guards and supervisors as defined by the Act, casual employees, and all other employees.

[Direction of Election and Excelsior footnote omitted from publication.]

¹² See Kleinberg, Kaplan, Wolf, Cohen & Burrows, P.C., 253 NLRB 450 (1980)